

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1184 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No.

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SANJAYKUMAR SHRINIWAS RAI

Versus

COMMISSIONER OF POLICE

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Appearance:

MS DR KACHHAVAH for Petitioner

MR HL JANI, AGP, for the Respondents.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 11/08/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 28-1-98 passed by the Police Commissioner, Ahmedabad City, under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ( hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention. The

detaining authority after considering the material of pendency of three criminal cases for the alleged offences under Sections 384, 114 and 365 IPC and the statements of four witnesses for the alleged incidents dated 3-1-98 and 7-1-98 has recorded a subjective satisfaction that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA Act and, therefore, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary to pass the order of detention and accordingly has passed the impugned order of detention.

As far as the allegations made by the concerned witnesses are concerned, it is stated that on 3-1-98 the witness was beaten by the petitioner when he demanded money for the articles purchased by the petitioner from his shop stating that he is the brother of one Babu Bhaiya and, therefore, he would not pay to any one. Similarly it is the say of the witness for the incident dated 7-1-98 that the petitioner and his associates came to his place of business and demanded HAPTA and when the witness declined, he was beaten by the petitioner and his associates stating that he is the brother of one Babu Bhaiya and nobody dares to say no to him. Not only that, the petitioner had took out Rs.450/- from the pocket of the witness. Many persons gathered to witness the said incidents of beating. However, they all started running helter-skelter when the petitioner and his associates rushed towards the crowd with open knife and an atmosphere of fear and terror was created and the even tempo of life was disturbed.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

This petition is required to be allowed on the ground that even if the allegations made against the petitioner are accepted as true for the sake of arguments, the same at best can be treated as breach of law and order and not public order. I have gone through the statements of the witnesses which are stereo-type. Reading the same, it clearly establishes without any manner of doubt that the statements are quite general and vague in nature and the alleged incidents are against individuals and the general public is not concerned at

all and, therefore, it cannot be contended that the petitioner is involved in committing breaches of public order. Even if the allegations made are believed to be true, the same at best can be termed as breach of law and order and in no circumstances the same can be termed as breach of public order. Consequently, therefore, the satisfaction arrived at by the detaining authority that the petitioner is a dangerous person is also visited. The order of detention is therefore liable to be quashed and set aside.

In the result, this petition is allowed. The order of detention dated 28-1-98 is quashed and set aside. The detenu Sanjaykumar Shrinivas Rai is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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